

AMENDED IN SENATE MAY 20, 2009

**SENATE BILL**

**No. 362**

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**Introduced by Senator Florez**

February 25, 2009

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~~An act to amend Sections 221, 58892.2, 61345, 61384, 61411.2, 61810, 62079, 62146, 62149, 62151, 62191, 62193, 62502, 62504, 62520, 62564, 62565, 62580, 62582, 62623, 62660, 62750, and 64305 of, to repeal Sections 62563, 62564.5, and 62640 of, and to repeal Chapter 3 (commencing with Section 62700) of Part 3 of Division 21 of, the Food and Agricultural Code, relating to milk. An act to amend Sections 62708.5 and 62722 of the Food and Agricultural Code, relating to milk.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 362, as amended, Florez. Milk pooling:~~equalization pools. exemptions.~~

Existing law, the Gonsalves Milk Pooling Act (the act), provides for equalization pools and milk pooling to govern the production and distribution of fluid milk and fluid cream. The act authorizes the Secretary of Food and Agriculture to develop a pooling plan, with specified items required to be included in the pooling plan, under which producers of milk are assigned a pool quota that determines the amount of class 1 milk the producer can sell to handlers within the pooling system and the prices to be paid by handlers to producers. ~~The act provides related provisions concerning fee assessments, violations, and other pooling plan requirements.~~

~~This bill would repeal the act and make conforming changes.~~

*The act permits a producer-handler, as specified, who elects to operate outside the pool to make certain prescribed deductions from*

*its class 1 sales, excluding sales to a handler, before being required to account to the pool.*

*This bill would instead permit a producer-handler who elects or has elected to operate outside the pool to make deductions for all of its production from its class 1 sales before being required to account to the pool. The bill would also delete certain provisions relating to the participation of milk production of exempted producer-handlers in either the base pool or overbase pool and to the transfer by a producer-handler of the option to join or operate outside the pool.*

*The act provides that producers of certified milk or guaranteed raw milk have the option, at the time of the adoption of the initial pooling plan, to be subject to the plan or to be excluded from the plan.*

*This bill would also include a dairy farm that produces and processes raw milk, as defined, within those provisions. The bill would make conforming and technical changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 62708.5 of the Food and Agricultural*  
2     *Code is amended to read:*  
3     62708.5. (a) A producer-handler, for purposes of this chapter,  
4     shall also include, as a separate and distinct category of  
5     producer-handlers, any producer and any handler who purchases  
6     or handles fluid milk or fluid cream produced by this producer if  
7     all of the ownership of the handler and all of the ownership of the  
8     producer is owned by the same person or persons and their  
9     ownership in the producer or handler is at least 95 percent identical  
10    for each person with their ownership in the handler or producer.  
11    This ownership shall not exceed 10 individual persons or owners  
12    of equitable interest in a partnership, corporation, or other legally  
13    constituted business association.  
14    (b) The ownership required by this section may be through a  
15    partnership, corporation, or other legally constituted business  
16    association if the entities are owned by the same person or persons,  
17    and there is at least 95 percent identity of ownership for each  
18    person with their ownership in the handler or producer. For  
19    purposes of this section, a “person” or “persons” includes the  
20    spouse, or other persons of lineal consanguinity of the first or

second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person. For purposes of this section, property pledged or hypothecated in any manner to others shall be considered “owned” if equitable ownership with management and control remain with the producer-handler.

(c) Ownership as provided in this section shall have existed at the time of the base period selected by the producer under Section 62707 and at all other times thereafter.

(d) Any such producer-distributor may, until August 6, 1969, do either of the following:

- (1) Join and operate wholly within the pool.
- (2) Have its entire original production base and pool quota determined during the base period it selected as a producer pursuant to Section 62707, established as a part of the pooling plan, and, nevertheless elect to operate entirely outside of the pool to the extent authorized by this section.

~~(e) Any producer-handler who qualifies under this section and elects to operate outside the pool, to the extent of the authority granted, shall have the right to make deductions, as follows, from its own class 1 sales, excluding sales to a handler, whether in bulk or packaged, before being required to account to the pool:~~

~~(1) If it has not sold production base and pool quota subsequent to February 9, 1977, it may deduct its original quota, and quota purchased prior to March 1, 1995, plus a daily deduction of 150 pounds of milk fat and 375 pounds of solids not fat.~~

~~(2) If it has sold production base and pool quota subsequent to February 9, 1977, it may only deduct its original pool quota, and quota purchased prior to March 1, 1995.~~

*(e) Any producer-handler who qualifies under this section and elects or has elected to operate outside the pool, to the extent of the authority granted, shall have the right to make deductions for all of its production from its own class 1 sales before being required to account to the pool.*

(f) The deductions from class 1 sales authorized pursuant to this section may be made irrespective of the fact that the average class 1 usage in the pool for that month may be less than 100 percent of the pool quota in that pool.

~~(g) Any production subject to this section from the producer-handler selecting this option shall not have the right to participate in the quota pool, irrespective of the fact that the producer-handler did not sell all of the quota as class 1, and will participate in either the base pool or the overbase pool depending upon whether the total production base of the producer is sufficient to cover the milk delivered in excess of the class 1 usage exempted hereunder, otherwise the production in excess of the exempt producer-handler's own class 1 sales, as defined in this section, shall be accounted for as overbase milk.~~

~~(h)~~  
(g) The fact that a producer-handler qualifies as to one of its milk production operations under this section does not prevent it from operating on an entirely separate nonqualifying basis (and, therefore, subject to pooling) at other milk production facilities, and with other nonqualifying persons at these other milk production facilities. ~~A producer-handler can neither buy nor sell pool quota and transfer therewith the option granted under this section, but this shall not prevent him or her from purchasing or selling pool quota or production base as otherwise provided in this chapter.~~ *This section does not prevent a producer-handler from purchasing or selling pool quota or production base as otherwise provided in this chapter.*

~~(i)~~  
(h) If at any time ownership, as defined in this section, ceases, the producer-handler shall no longer be eligible for the options in this section, shall account to the pool as a separate handler, and shall be entitled to reentry into producer participation in the pool on the same basis as a producer-handler may under the last paragraph of Section 62708.

*SEC. 2. Section 62722 of the Food and Agricultural Code is amended to read:*

62722. Pooling plans shall not apply to the production of goats milk or producer-handlers who produce and sell less than 500 gallons of fluid milk used for class 1 purposes per day unless they specifically request entry into the pool at the time of the adoption of the initial pooling plan for that area. ~~Producers~~ *A dairy farm that produces and processes raw milk and a producer* of certified milk or guaranteed raw milk shall have the option, at the time of the adoption of the initial pooling plan under this chapter, to be

1 subject to the plan, and accordingly to have a production base and  
2 pool quota established for the producer, or to be excluded from  
3 the plan. *For purposes of this section, “dairy farm that produces  
4 and processes raw milk” means a vertically integrated operation  
5 that includes a dairy farm and processing plant owned and  
6 operated by the same entity that produces guaranteed raw milk,  
7 or grade A raw milk, to be sold to the consumer.*

8 (a) Any such producer of less than 500 gallons of fluid milk per  
9 day, ~~or any such dairy farm that produces and processes raw milk,~~  
10 ~~producer of certified milk, or any such producer of guaranteed raw~~  
11 ~~milk, electing to be excluded from the plan, may at any later time~~  
12 ~~be admitted to the pool, but with only the production base and pool~~  
13 ~~quota to which he or she the producer would have originally been~~  
14 ~~entitled or his or her the producer’s existing production and average~~  
15 ~~daily class 1 usage during the 12 months preceding his or her the~~  
16 ~~producer’s entry into the pool, whichever is less.~~

17 (b) Any producer claiming exemptions from the provision of  
18 any pooling plan by reason of the provisions of Section 62708,  
19 62708.1, or this section, who loses his or her exemption by failure  
20 to meet the requirements for exemptions set forth in those sections  
21 shall automatically be deemed to have applied for and become a  
22 part of a producer pool on September 1st following any year ended  
23 August 31st during which the ~~director~~ *secretary* determines ~~he or~~  
24 ~~she the producer~~ is no longer entitled to exemption, and ~~his or her~~  
25 ~~the producer’s~~ admittance into such a pool shall be on the basis  
26 of the production base and pool quota calculations as set forth in  
27 those sections.

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30 **All matter omitted in this version of the bill**  
31 **appears in the bill as introduced in the**  
32 **Senate, February 25, 2009 (JR11)**  
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